

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
Colleen McGuire,

Charging Party,

HUDALJ 05-90-1181-1

v.

Joanne Hacker,

Respondent.

**INITIAL DECISION AND ORDER ON APPLICATION
FOR ATTORNEY FEES AND COSTS**

On January 4, 1993, Joanne Hacker ("Respondent") filed a Motion for Award of Costs and Reasonable Attorney Fees. Respondent seeks \$6,813.00 in attorney fees and \$1,435.60 in costs. The Charging Party filed its Answer to Respondent's Motion on January 29, 1993. Pursuant to an Order issued on February 1, 1993, Respondent was given the opportunity to respond on or before February 22, 1993.¹ To date, no such responsive pleading has been filed by Respondent. Accordingly, this matter is ripe for review.

Under the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, ("the Fair Housing Act"), a prevailing party in an administrative proceeding is entitled to recover reasonable attorney fees and costs from the United States to the extent provided by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 ("the EAJA"). *See* 42 U.S.C. § 3612(p). HUD regulations promulgated pursuant to the Fair Housing Act further specify that where such recovery of attorney fees and costs is sought, HUD's EAJA regulations, set forth at 24 C.F.R. Part 14, are applicable. *See* 24 C.F.R. § 104.940(a)(1).²

¹Had Respondent filed a responsive pleading, the Charging Party would have had an opportunity to reply on or before March 15, 1993.

²Similarly, HUD's EAJA regulations specify that their provisions are applicable to adversary adjudications conducted by the Department under the Fair Housing Act and its implementing regulations. *See* 24 C.F.R. § 14.115(a)(10).

The Charging Party argues, *inter alia*, that Respondent's application for attorney fees and costs should be denied because it does not contain a statement that Respondent's net worth does not exceed \$2,000,000 and because the application was not submitted with a net worth exhibit. To support this argument, the Charging Party avers that "it was revealed during the hearing that the Respondent has extensive real estate holdings." *See Answer at 14.*

The EAJA provides in pertinent part:

A party seeking an award of fees and other expenses *shall*, within thirty days of a final disposition in the adversary adjudication, *submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award* under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. . . .

5 U.S.C. § 504(a)(2) (emphasis added).

An eligible party under the EAJA includes "an individual whose net worth did not exceed \$2,000,000 at the time the adversary adjudication was initiated. . . ." *Id.* at § 504(b)(1)(B)(i). HUD's EAJA regulations specify that "the applicant must show that it meets all conditions of eligibility," which include the requirement that an individual not have a net worth in excess of \$2,000,000. *See* 24 C.F.R. § 14.120. The regulations further specify that the application for an award of fees and expenses "shall. . . include a statement that the applicant's net worth does not exceed \$2 million (if an individual). . ." *Id.* at § 14.200(b). The applicant must also submit "a detailed exhibit showing the net worth of the applicant and any affiliates. . . when the proceeding was initiated" with its application. *Id.* at § 14.205(a). The exhibit "may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities, and is sufficient to determine whether the applicant qualifies under the standards of the [EAJA] and [HUD's EAJA regulations]." *Id.* Finally, the regulations specifically require that the initial decision on the application include written findings

and conclusions on, *inter alia*, "[t]he applicant's qualification as a *party* under 5 U.S.C. 504(b)(1)(B)," where relevant. *Id.* at § 14.330(b) (emphasis in original).

Respondent's Motion does not contain a specific allegation that her net worth does not exceed \$2,000,000 and it did not attach a net worth exhibit. Respondent did not subsequently provide that information or explain its absence, even after having been put on notice of the

omission and having been given an opportunity to respond. Respondent, therefore, has not met her burden of demonstrating that she is eligible for an award of attorney fees and other expenses under the Fair Housing Act. Accordingly, it is hereby

ORDERED, that Respondent's Motion for Award of Costs and Reasonable Attorney Fees is *denied*.

WILLIAM C. CREGAR
Administrative Law Judge

Dated: March 4, 1993